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4 **UNITED STATES DISTRICT COURT**

5 **NORTHERN DISTRICT OF CALIFORNIA**

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IN RE CAPACITORS ANTITRUST

LITIGATION

Case No. Type No. 3:17-md-02801-JD

DEFENDANTS' NOTICE OF

OBJECTION

This Document Relates to:

Avnet, Inc. v Hitachi Chemical Co., Ltd., et al.,
Case No. 3:17-cv-07046-JD

Benchmark Electronics, Inc. et al. v. AVX Corp.
et al., Case No. 3:17-cv-07047-JD

Jaco Electronics, Inc., et al. v. Nippon Chemi-
Con Co. et al., Case No. 3:19-cv-01902-JD

Arrow Electronics, Inc. v. Elna Co., Ltd., et al.,
Case No. 3:18-cv-02657-JD

DEFENDANTS' NOTICE OF OBJECTION TO PLAINTIFFS' LEXECON WAIVER

The undersigned Defendants¹ hereby give notice of their objection to Plaintiff Avnet, Benchmark, Jaco, and Arrow's purported waiver of remand to the District of Arizona and District of Colorado for trial proceedings. Plaintiff Avnet filed its action in the District of Arizona on August 22, 2016. Plaintiff Benchmark filed its action in the District of Arizona on June 28, 2017. Plaintiff Jaco, who is represented by the same counsel as Avnet and Benchmark, filed its action in the District of Arizona on March 13, 2019. Plaintiff Arrow filed its action in the District of Colorado on April

¹ "Defendants" are Elna Co., Ltd., Elna America, Inc., Hitachi Chemical Co., Ltd., Hitachi AIC Inc., Hitachi Chemical Co. America, Ltd., Holy Stone Enterprise Co., Ltd., Holy Stone Polytech Co. Ltd., Vishay Polytech Co., Ltd., Milestone Global Technology, Inc. (d/b/a HolyStone International), Nichicon Corporation, Nichicon (America) Corporation, Rubycon Corporation, and Rubycon America Inc. The Hitachi, Nichicon, and Rubycon Defendants join this objection only as to Avnet, Benchmark, and Jaco. Holy Stone and Vishay Defendants join this objection only as to Avnet and Benchmark.

1 16, 2018. The United States Judicial Panel for Multidistrict Litigation consolidated each action in
 2 the Northern District of California for pretrial proceedings only, with corresponding orders that the
 3 cases be remanded to Arizona and Colorado for trial.² The Plaintiffs' premature purported waiver
 4 of remand has been filed while *Daubert* and summary judgment motions are still pending.

5 Waiver of remand requires the consent of all parties. *See In re Delta Dental Antitrust Litig.*,
 6 509 F.Supp.3d 1377, 1381 (J.P.M.L. 2020) (absent waiver by the parties, trial must occur in the
 7 transferor court); *In re Cessna 208 Series Aircraft Prods. Liab. Litig.*, 2009 U.S. Dist. LEXIS 12852,
 8 at *13 (D. Kan. Feb. 19, 2009) (“Absent consent of the parties, Court must remand cases which
 9 plaintiffs filed in other district courts.”); *In re New Motor Vehicles Canadian Export Antitrust Litig.*,
 10 235 F.R.D. 127, 146 n.72 (D. Me. 2006) (absent parties consent, cases returned to their respective
 11 districts for trial), *vacated on other grounds*, 522 F.3d 6 (1st Cir. 2008); *In re Fosamax Prods. Liab.*
 12 *Litig.*, 2011 U.S. Dist. LEXIS 49679 at *89-93 (S.D.N.Y. April 27, 2011) (trial in transferee court
 13 appropriate with consent of both plaintiffs and defendants and noting, “a transferee court lacks
 14 authority to conduct a trial of an MDL member case not originally filed in the transferee court
 15 without the consent of the parties.”); *In re Brand-Name Prescription Drugs Antitrust Litig.*, 264 F.
 16 Supp.2d 1372, 1377 n.4 (J.P.M.L. 2003) (parties must consent for MDL transferee court to retain
 17 case for trial). For the reasons above, Defendants do not consent to the waiver. For the same
 18 reasons, Defendants believe that a status conference regarding “trial proceedings” requested by
 19 Plaintiffs is unnecessary.

20 DATED: September 23, 2021

Respectfully Submitted,

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² See *In re: Capacitors Antitrust Litigation (No. III)*, Case MDL No. 2801, Orders dated December 5, 2017 (ECF 92), May 2, 2018 (ECF 101), and April 5, 2019 (ECF 127)

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